

ORIGINAL
FILED
U.S. DISTRICT COURT

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Attorneys for The SCO Group, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

**SCO'S MOTION FOR LEAVE TO
TAKE CERTAIN PROSPECTIVE
DEPOSITIONS**

Case No. 2:03CV0294DAK
Honorable Dale A. Kimball
Magistrate Judge Brooke C. Wells

Pursuant to Rule 26 of the Federal Rules of Civil Procedure, Plaintiff The SCO Group, Incorporated ("SCO"), requests the Court to grant SCO leave to take certain prospective depositions of Intel Corporation ("Intel"), The Open Group, Incorporated ("The Open Group") and Oracle Corporation ("Oracle").

SCO served Rule 30(b)(6) subpoenas (as well as document requests) on each of these corporations requiring them to appear for depositions scheduled for January 27, 2006. The corporations did not appear for their depositions and have not filed motions to quash or motions for protective order.


Considering the corporations' failure to produce a Rule 30(b)(6) witness on January 27, 2006 (today), SCO will file the appropriate motions to compel in the two jurisdictions from which the three subpoenas at issue were issued. In those motions, SCO intends to cite the precedent demonstrating that each of the three companies was given adequate notice and was obligated to produce a Rule 30(b)(6) witness on the noticed topics (and to produce documents in response to the requests therein) – or else should have filed a motion to quash or for protective order, which none of the three companies did.

Accordingly, SCO respectfully requests that, to the extent the district courts in the foregoing two jurisdictions grant SCO's motions to compel, this Court permit SCO then to take the Rule 30(b)(6) depositions of the foregoing three companies. If those companies were obligated to appear for deposition, but simply and improperly declined to do so, their refusal of course should not work to SCO's detriment with respect to the end of certain fact discovery on January 27, 2006. SCO proposes to inform this Court if the foregoing two jurisdictions issue such an order or orders, and thereby request the Court for leave to take the deposition or depositions at issue.

DATED this 27th day of January, 2006.

Respectfully submitted,

By:


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CERTIFICATE OF SERVICE

Plaintiff, The SCO Group, Inc., hereby certifies that a true and correct copy of the foregoing Motion for Leave To Take Certain Prospective Depositions was served on Defendant IBM on the 27th day of January, 2006:

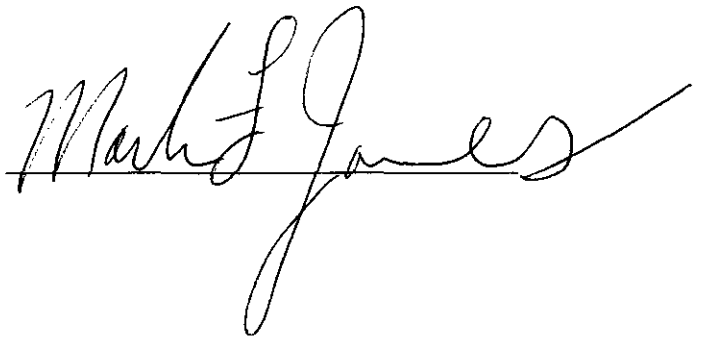
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A handwritten signature in black ink, appearing to read "Mark L. Jones", written over a horizontal line.